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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,461	02/23/2004	Heinz Plank	LVIP:111 US	8252
7590	05/31/2006		EXAMINER	
HOWARD M. ELLIS SIMPSON & SIMPSON, PLLC 5555 Main Street Williamsville, NY 14221			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/784,461	PLANK, HEINZ	
	Examiner Luan K. Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-14 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date 2/23/04 & 4/28/05.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

***Drawings***

1. The drawings are objected to because the sectional views A-A and B-B in Figures 7a-7b should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view (MPEP 608.02(h)(3)). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 8, the phrase “two parallel lug” is incomplete and indefinite. In claim 9, the term “protrusion” appears to be inaccurate because the numeral 61 in Figure 7a appears to show a recess. In claim 10, the phrase “dimensionally stable material” is vague and indefinite because it has no clear meaning.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 9, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al. (6,179,127; hereinafter Kato'127). Kato'127 discloses a carrier/container (1) comprising a peripheral delimiting wall (22) which is constituted by a left and a right sidewall that are both joined to one another via a back wall and a front wall, a base (Figure 16) is attached to the peripheral delimiting wall, at least one peripheral step (62) formed in the interior of the carrier/container for holding an article (51) spaced away from the base and at least one protrusion (63) formed in the left or the right sidewall. The carrier/container of Kato'127 is inherently capable of holding a slide for immunological labeling of thin tissue sections. The carrier/container of Kato'127 appears to be formed from a dimensionally stable material.

6. Claims 1-4, 9, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakazono et al. (6,296,122; hereinafter Nakazono'122). Nakazono'122 discloses a tray/container (1) comprising a peripheral delimiting wall which is constituted by a left and a right sidewall that are both joined to one another via a back wall and a front wall, a base (6) is attached to the peripheral delimiting wall, at least one peripheral step (3, Figure 1) formed in the interior of the tray/container for holding an article (2) spaced away from the base and at least one protrusion (3a) formed in the left or the right sidewall. The tray/container of Nakazono'122 is inherently capable of holding a slide for immunological labeling of thin tissue sections. The tray of Nakazono'122 formed from a thermoplastic material which is a dimensionally stable material. As to claim 3, Nakazono'122 discloses at least one stop (11a)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5, 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al. (6,179,127; hereinafter Kato'127) or Nakazono et al. (6,296,122; hereinafter Nakazono'122) in view of Chenoweth (6,076,681) and Bloom (6,293,404). Kato'127 or Nakazono'122 discloses the container as above having all the limitations of the claims except for the base comprises a first and second elevation being cup-shaped for supporting the article.

Chenoweth shows a carrier (10) comprising at least one corner flange (56) for supporting an article (25) and at least one elevation (42) for supporting a bottom surface of the article to providing an additional support for the article. Bloom suggest a carrier (100) having a first and a second elevation (134, Figure 10) with cup-shaped for supporting a bottom surface of an article. It would have been obvious to one having ordinary skill in the art in view of Chenoweth and Bloom to modify the container of Kato'127 or Nakazono'122 so the base includes a first and second elevation of cup-shaped for supporting the article for further securing the article within the container. As to claim 11, the container of Nakazono'122 formed by molding. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of Nakazono'122 by injection because the selection of the specific method for

forming the container would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

9. Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakazono et al. (6,296,122; hereinafter Nakazono'122) in view of The Official Notice. Nakazono'122 discloses the container as above having all the limitations of the claims except for the container comprises two grip recesses in the region of the front wall. The Official Notice is taken of the old and conventional practice of providing a container having two grip recesses to facilitate carrying the container. It would have been obvious to one having ordinary skill in the art in view of The Official Notice to modify the container of Nakazono'122 so in the region of the front wall comprises two grip recesses to facilitate carrying the container.

10. Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakazono et al. (6,296,122; hereinafter Nakazono'122) in view of Lafond et al. (6,446,807; hereinafter Lafond'807) or Burton et al. (5,310,076; hereinafter Burton'076). Nakazono'122 discloses the container as above having all the limitations of the claims except for the back wall comprises two parallel lugs.

Lafond'807 shows a container (12) having two parallel lugs (38, 44) that serve partially as guides for stacking the container. Burton'076 suggests a container (100) having two parallel lugs (103, 107) that serve partially as guides for stacking the container. It would have been obvious to one having ordinary skill in the art in view of Lafond'807 or Burton'076 to modify the container of

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Nakazono'122 so in the region of the back wall includes two parallel lugs to facilitate stacking the container.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb  
May 26, 2006



Luan K. Bui  
Primary Examiner  
Art Unit 3728